

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LEONARD CUSENZA, individually and on behalf of all others similarly situated,)	
)	
PLAINTIFFS,)	
)	
v.)	CIVIL ACTION NO. 11-cv-11623-RGS
)	
THE TJX COMPANIES, INC.,)	
MARSHALLS OF MA, INC., AND)	
MARMAXX OPERATING)	
CORPORATION d/b/a MARMAXX)	
GROUP,)	
)	
DEFENDANTS.)	

**DEFENDANTS' MOTION TO DISMISS, OR IN THE ALTERNATIVE, TO TRANSFER
VENUE OR STAY PROCEEDINGS IN FAVOR OF PRIOR LITIGATION**

Defendants The TJX Companies, Inc., Marshalls of MA, Inc., and MARMAXX Operating Corporation d/b/a MARMAXX Group (hereinafter collectively "Defendants"), hereby move this Court to dismiss Plaintiff Leonard Cusenza's Complaint and Demand for Jury Trial without prejudice, or in the alternative, transfer venue or stay this litigation, under the first-filed rule in favor of consolidated litigation currently pending in the United States District Court for the Southern District of New York styled *Archibald, et al. v. Marshalls of MA, Inc., et al.*, Civil Action No. 09 – CV – 2323 (LAP), and *Guillen v. Marshalls of MA, Inc., et al.*, Civil Action No. 09 – CV – 9575 (LAP) (GWG). Defendants are filing simultaneously herewith a memorandum in support of the instant Motion.

REQUEST FOR ORAL ARGUMENT

Defendants respectfully request oral argument on this Motion.

LOCAL RULE 7.1 CERTIFICATION

Counsel for Defendants certifies that we have attempted to confer in good faith with counsel for the Plaintiff to resolve or narrow the issues. During the week of October 10, 2011, we left messages with Plaintiff's counsel's assistant and followed up via letter dated October 13, 2011. Plaintiff's counsel responded via letter dated October 19, 2011. The parties were unable to resolve or narrow the issues presented herein.

Respectfully submitted,

THE TJX COMPANIES, INC., MARSHALLS
OF MA, INC., AND MARMAXX
OPERATING CORPORATION D/B/A
MARMAXX GROUP,

By their attorneys,

/s/ Gregory C. Keating

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Dated: October 24, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of October, 2011 the foregoing Motion was filed electronically through the ECF system, is available for viewing and downloading from the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants.

/s/ Gregory C. Keating

Gregory C. Keating